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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/637,888	08/07/2003	Darwin Garton	34084	2486
23589	7590	02/17/2005	EXAMINER	
HOVEY WILLIAMS LLP 2405 GRAND BLVD., SUITE 400 KANSAS CITY, MO 64108			SZUMNY, JONATHON A	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/637,888

Applicant(s)

GARTON, DARWIN

Examiner

Jon A Szumny

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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21.5/05  
This is the <sup>SECOND</sup> first office action for application number 10/637,888, Industrial Tank Support, filed on August 7, 2003.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

*Claim Rejections - 35 USC § 112*

Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is completely unclear if one or both or none of the first and second tanks are positively included in the invention. The preamble leads one to believe both the first and second tanks are positively included in the claims. However, later on in the claim, "if the first tank is to be mounted..." and "if the second tank is to be mounted..." render the claim ambiguous because it is now not known if the first and second tanks *are* or *are not* positively included as part of the invention. What if the first and second tanks *are not* to be mounted? Are they not even part of the invention now? It is just not known. Obviously, the first and second tanks cannot both be mounted at the same time. Since they cannot both be mounted at the same time, how does the claim teach "A method of mounting first and second tanks"? For the purposes of this office action, the Examiner will attempt to apply the prior art as best understood.

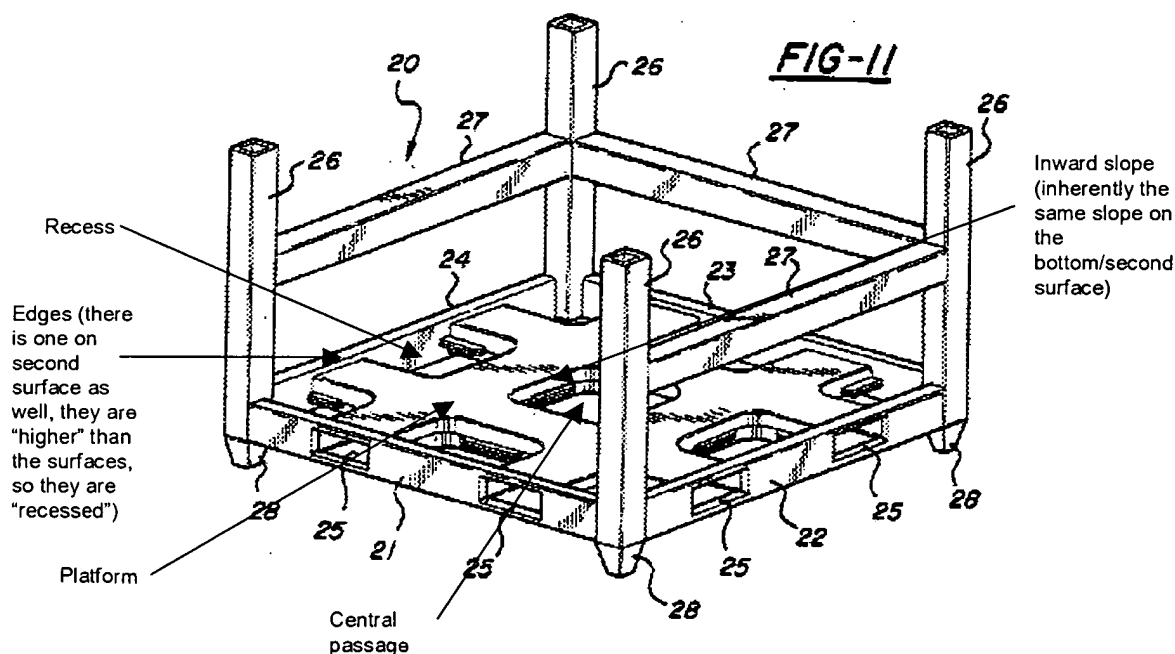
*Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 6, 7, 9, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent number 5,533,456 to Regina.

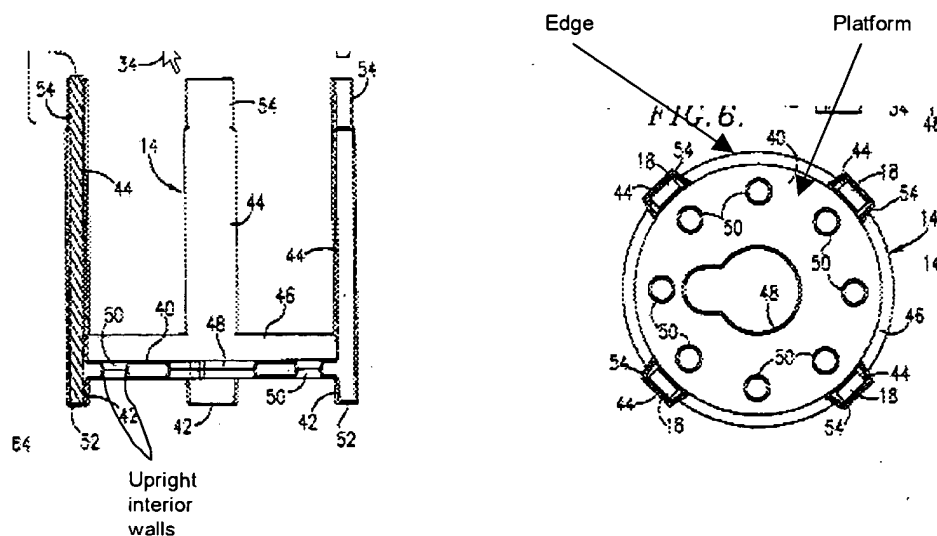


Regina '456 discloses a support (figure II) comprising a multiplicity of tubular legs (26) each having a top end and a bottom end; and a platform (above) coupled to the legs between the top end and the bottom end, the platform presenting a first surface (top thereof) and an opposite second surface (bottom thereof), wherein the first and second surfaces are differently configured (inherently, one of the surfaces is configured in an "upward" direction and one of the

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surfaces is configured in a “downward” direction), wherein the platform includes a central passage (above), wherein at least one of the first and second surfaces includes an edge (above) surrounding a recess (above) with the respective surface located interiorly of the edge and outside the central passage, wherein the first surface is substantially flat and horizontal when the support is supported on its legs, wherein the second surface is sloped inwardly toward the central passage (see above), wherein each of the first and second surfaces is bounded by a respective edge and the first and second surfaces are recessed relative to their respective surrounding edges (see above), wherein a stand is coupled to one of the legs (when another support/stand is coupled on top of the support, see column 3, lines 13-15), wherein a “stirrer” is mounted on the stand (one of the legs could “stir” something).

Claims 1-6, 10, 13, 19, 20, 22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent number 5,490,603 to Davis.



Davis '603 discloses a support (above) comprising a multiplicity of tubular legs (44) each having a top end and a bottom end; and a platform (above) coupled to the legs between the top end and the bottom end, the platform presenting a first surface (top or bottom thereof) and an

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opposite second surface (bottom or top thereof), wherein the first and second surfaces are differently configured (inherently, the one of the surfaces is configured in an “upward” direction and one of the surfaces is configured in a “downward” direction), wherein the platform includes a circular central passage (48, generally), wherein at least one of the first and second surfaces includes an edge (above) surrounding a recess (50) with the respective surface located interiorly of the edge and outside the central passage, wherein the platform includes a platform wall enclosing a chamber (the platform is hollow) and each of the legs includes a sidewall enclosing a cavity therein (the legs are hollow), such that the chamber of the platform is in fluidic communication with at least one of the cavities of the legs (see above), wherein the first surface is substantially flat and horizontal when the support is supported on its legs, wherein the platform and legs are unitary and molded of synthetic resin (column 2, line 44), wherein the multiplicity of legs includes at least four of the legs spaced equidistant around the platform, wherein the top end of at least one of the legs has an opening (near 54) in the top end, wherein the support includes covering means (16) removably mounted on the top end, wherein the platform includes portals (alternatively 50) extending through the platform and located adjacent respective ones of the legs, the platform further including upright interior walls (above) extending between the first and second surfaces and surrounding the portals, wherein Davis ‘603 inherently teaches a method of mounting first and second tanks (“tanks,” column 5, line 13) with differently configured first and second configurations (inherently, some part of the first tank is configured differently than another part of the second tank) to a tank support, wherein the Examiner is assuming the first and second tanks are not to be mounted to the tank support.

*Claim Rejections - 35 USC § 103*

Claims 5, 13, 14 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Regina '456 in view of Davis '603.

Regarding claims 5 and 19, Regina '456 discloses the previous invention failing to specifically teach the platform to include a platform wall enclosing a chamber and each of the legs includes a sidewall enclosing a cavity therein, such that the chamber of the platform is in fluidic communication with at least one of the cavities of the legs. Nevertheless, Davis '603 discloses the previously revealed invention wherein the chamber of the platform is in fluidic communication with at least one of the cavities of the legs. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the platform of Regina '456 to be in fluid communication with the legs so as to provide a support that is simpler to manufacture/mold as is inherently taught by Davis '603.

With respect to claims 13 and 14, Regina '456 in view of Davis '603 teach the previous invention wherein the platform is substantially rectangular in plan and includes an outer wall having substantially planar wall segments which are substantially tangent to the sidewall of the four legs, but fail to specifically teach the legs to be spaced exactly equidistant around the platform. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the legs slightly to be spaced exactly equidistant around the platform so as to provide for superior support of an object utilizing the platform, in addition to satisfying the preferences of a user.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis '603 in view of U.S. Patent number 5,520,121 to Schubart et al.

Davis '603 discloses the previous invention failing to specifically reveal the second surface to be sloped inwardly towards the central passage and be substantially frustum shaped. Nevertheless, Schubart et al. '121 discloses a support (figure 5) including a platform with first and second surfaces, wherein the second surface is sloped inwardly and is substantially frustum shaped (34,36). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the second surface so as to slope inwardly towards the central passage and be substantially frustum shaped so as to allow the platform to facilitate receipt of a tank.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Regina '456 in view of U.S. Patent number 4,848,711 to Mandel.

Regina '456 discloses the previous invention failing to specifically reveal the legs to have a transverse slot with a strap received therein. Nevertheless, Mandel '711 teaches a support (figures 1-2) with a platform and legs, wherein the legs have a transverse slot (10d') with a strap (12) received therein. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the legs of the support of Regina '456 so as to have a slot and strap as in Mandel '711 in order to provide for further securement of an object utilizing the support.

Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis '603.

Davis '603 discloses the previous invention wherein the outer wall of the platform has planar wall segments that are substantially tangent to the sidewall of the legs, but fails to specifically teach the multiplicity of legs to include at least six legs spaced equidistant around the platform such that the platform is now hexagonal in plan. It would have been obvious to



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one of ordinary skill in the art at the time the invention was made to have provided for six legs spaced equidistant around the platform which would naturally provide for a platform that is hexagonal in plan since doing so would be seen as simply a duplication of parts. See *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Regina '456 in view of Davis '603, and further in view of U.S. Patent number 5,746,405 to Dvorak et al.

Regina '456 in view of Davis '603 teach the previous invention failing to specifically reveal the bottom end of at least one of the legs to have a hole therein. However, Dvorak et al. '405 teaches a support with a platform and legs, wherein the bottom end of at least one of the legs has a hole therein (figure 8, near the top of 92). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the bottom ends of the legs so as to have a hole therein to allow for a screw and foot arrangement to be placed therein to allow the height of the legs to be adjusted hence allowing the support to be used on a greater variety of terrains.

### *Response to Arguments*

Applicant's arguments filed December 3, 2004 have been fully considered but they are not persuasive.

Applicant's arguments with respect to claims 1-23 have been considered but are moot in view of the new ground(s) of rejection.

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*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon A Szumny whose telephone number is (703) 306-3403. The examiner can normally be reached on Monday-Friday 8-4.

The fax phone number for the organization where this application and proceeding are assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

A handwritten signature in black ink, appearing to read 'Jon Szumny', with a stylized flourish extending to the right.

Jon Szumny  
Patent Examiner  
Technology Center 3600  
Art Unit 3632  
February 15, 2005